

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
CHARLOTTE DIVISION  
3:21-cv-00385-RJC-DCK

<b>PETER TSCHIFFELY,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	
	)	
<b>CROSS COUNTRY ADJUSTING, INC. ,</b>	)	<u>Order</u>
	)	
<b>Defendant.</b>	)	
	)	
	)	

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**THIS MATTER** comes before the Court on Defendant's motion to dismiss for lack of personal jurisdiction (Doc. No. 6), the Magistrate Judge's Memorandum and Recommendation ("M&R") (Doc. No. 16), and Defendant's objection (Doc. No. 17).

## **I. BACKGROUND**

Neither party has objected to the Magistrate Judge's statement of the factual and procedural background of this case. Therefore, the Court adopts the facts as set forth in the M&R.

## **II. STANDARD OF REVIEW**

A district court may assign dispositive pretrial matters, including motions to dismiss, to a magistrate judge for "proposed findings of fact and recommendations." 28 U.S.C. § 636(b)(1)(A) & (B). The Federal Magistrate Act provides that a district court "shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.* § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(3). However, "when objections to strictly legal issues are raised and no factual issues are challenged, de novo review of the record may be dispensed with." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). De

novo review is also not required “when a party makes general and conclusory objections that do not direct the court to a specific error in the magistrate’s proposed findings and recommendations.” *Id.* Similarly, when no objection is filed, “a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72, advisory committee note).

### **III. DISCUSSION**

Under Rule 72(b) of the Federal Rules of Civil Procedure, a district court judge shall make a de novo determination of any portion of an M&R to which specific written objection has been made. The M&R recommended the Court deny Defendant’s motion to dismiss for lack of personal jurisdiction “without prejudice to Defendant’s ability to re-file a similar motion at a later date if discovery reveals additional or different facts that might affect the Court’s jurisdictional determination.” (Doc. No. 16). Defendant filed a limited objection to the M&R in which it “does not object to the disposition” of its motion to dismiss, but makes “one narrow objection to the M&R to the extent it may suggest that evidence provided in Plaintiff’s affidavit in opposition to the motion to dismiss (ECF # 14) is not in dispute.” (Doc. No. 17). Plaintiff’s response to Defendant’s objection agrees “that the Memorandum & Recommendation cannot be cited as evidence of Defendant’s admission of fact or that it has conceded prior to answering the complaint that any fact referenced in the Memorandum & Recommendation is undisputed” and “therefore will consent that the parties cannot cite the M&R to suggest that any facts stated therein are undisputed.” (Doc. No. 18). No party otherwise objected to the M&R and the time for doing so has passed; nevertheless, this Court conducted a full review of the M&R and other documents of record. Having done so the Court hereby finds that the recommendation of the Magistrate Judge

is in accordance with the law and should be approved. By consent of the parties, the Court clarifies that the M&R may not be used as evidence or to otherwise suggest that the facts therein or the facts in Plaintiff's affidavit in opposition to the motion to dismiss are not disputed.

#### **IV. CONCLUSION**

**IT IS, THEREFORE, ORDERED** that:

1. Defendant's Motion to Dismiss, (Doc. No. 6), is **DENIED without prejudice**; and
2. The Magistrate Judge's M&R, (Doc. No. 16), is **ADOPTED**. The M&R may not be used as evidence or to otherwise suggest that the facts therein or the facts in Plaintiff's affidavit in opposition to the motion to dismiss are not disputed.

Signed: May 4, 2022



Robert J. Conrad, Jr.  
United States District Judge

